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Staff Report No. 5

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THE BOARD OF PERSONNEL APPEALS AND
THE CLASSIFICATION APPEALS PROCESS

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Objective: To provide information for the Personnel and Labor Relations Study Commission on Study Question 5:

- Part 1. Is the Board of Personnel Appeals effective in its role as the Appeals Body for Classification Appeals?
- Part 2. What effect does the Appeals Process have on the Classification system?

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I. INTRODUCTION

The intent of this paper is to examine the classification appeals role of the Board of Personnel Appeals (BPA) and its impact on the state's classification system. Both the classification plan administered by the Personnel Division and the appeals process administered by the BPA have encountered and generated several operational problems during the initial years of their implementation. Many of these problems have been addressed by changes in law and administrative rules as well as revisions of various policies and procedures. These revisions and their expected results will be examined in Section IV of this paper.

In the view of the Personnel Division a continuing problem is inconsistency and erosion of system integrity created by dual decision making by the BPA and the Personnel Division. The problem and the factors contributing to it will be the major focus of this paper. These factors are: (1) the broad scope of review assumed by the Board and (2) the inability of the Board to conduct an informed review. This is due in part from the failure of the Personnel Division to supply the Board with a full written account of the method, procedures and results of the classification process.

Before the intricacies of these complicated issues are presented, a brief description of the state's classification law and of the workings of the appeal process is in order.

II. STATUTORY AUTHORITY FOR THE CLASSIFICATION SYSTEM

In 1973, the 43rd Montana Legislature passed the Classification and Pay Act into law. This Act directed the Department of Administration to "develop a classification plan for all state positions and classes of positions in state service..." (2-18-201, MCA). The law specifies which state employees are to be covered by the classification plan. Also, in general terms, the law identifies the criteria for classifying state positions using the traditional civil service principles of comparability of duties, responsibilities, knowledge, skills and ability and similar pay for similar work.

In the final section of the Act, a board of personnel appeals was created. The purpose of the board was to allow employees subject to the classification plan "...to file a complaint with the board and to be heard, under the provisions of a grievance procedure to be prescribed by the board." The board was also given the general authority to

instruct the department to take corrective action that may be necessary to resolve grievances that are found to be legitimate. (2-18-1011, MCA).

The Board of Personnel Appeals was attached for administrative purposes only to the Department of Labor and Industry. This organizational arrangement was designed to avoid any conflict of interest that could arise if the board were attached to the Department of Administration, which administers the classification authority for the executive branch under the terms of the Classification and Pay Act. The 1973 act also specifies that the board will consist of five members appointed by the Governor. Two board members are to represent management, two members are to represent employees or employee organizations of the state, and one member is to represent a neutral position.

III. THE APPEAL PROCESS

Following the development of a classification methodology and the adoption of administrative rules, the Classification and Pay Act was implemented in the spring of 1975. An employee grievance process was simultaneously initiated by the BPA. The grievance process is available to all executive agency employees in classified positions. Originally an appeal could be filed by an individual who was dissatisfied with how his position was classified or by a group of employees in one class who were dissatisfied with the pay grade assigned to the class. In 1981, House Bill 840 law change eliminated the right to appeal the grade assigned to a class.

The grievance issue identified by an employee must result from the regular personnel classification process. Also, the grievance issue(s) identified on the appeal form must be considered appealable according to the administrative rules of the Board of Personnel Appeals. The Board recognizes thirteen appealable classification issues (ARM 26.24.5.) The employee cannot change or add appealable issues to the grievance form after the appeals process has been initiated unless the appeal is returned to step one.

Steps in the Formal Appeals Process:

Step One:

In the first step of the appeal process, an employee or group of employees submits the classification appeal issue(s) to the immediate supervisor of the position. If the supervisor concurs with the appeal request, an appropriate classification action may be submitted for review by the agency director and the Personnel Division.

Step Two:

In the second step of the process, an appeal is submitted to the agency director. The director can resolve the grievance by agreeing to address the grievance through the normal process of personnel classification.

Step Three:

When an agency director denies an appeal, the employee may continue the appeal to the Personnel Division. The Personnel Division investigates the appeal and issues a finding. If the employee agrees with these findings, the appeal is resolved. If the employee disagrees, he may continue the appeal on to the Board of Personnel Appeals.

Step Four:

Initially, upon receipt and acceptance of the appeal, the Board has the discretion to carry out a preliminary investigation. The Board can issue a preliminary decision based on findings of the investigation. If the appellant and the Personnel Division accept the preliminary decision, the grievance is resolved and the decision is final and binding.

If either party to the appeal rejects the preliminary decision or if the Board of Personnel Appeals exercises its discretion to forego the preliminary decision, a hearing is scheduled before a hearings examiner. The hearing and any preliminary investigation conducted by the Board are restricted by administrative rule to the classification issues(s) identified in step one of the appeals process.

The hearing is conducted under the guidelines of the Administrative Procedures Act and the Model Rules of the Attorney General. The only substantial guideline to the Board's review is found in ARM 24.26.513 which states that: "If the preponderance of evidence taken at the hearing shows the employee is aggrieved, the Board shall issue an order requiring action to resolve the employee's grievance."

If either party objects to the decision of a hearing examiner, they may file exceptions to request a hearing before the full five-member Board of Personnel Appeals. Hearings before the full Board are subject to the same procedural rules. Decisions by the Board are based on a majority vote of the Board members.

Either party dissatisfied by the final decision of the Board of Personnel Appeals may continue the process into a

state district court. From that point, the issue is outside the administrative appeal process of the state government. Rulings by the court can, of course, effectively overturn or enforce the decision of the Board of Personnel Appeals.

IV. PROCEDURAL AND POLICY REFORMS IN THE APPEALS PROCESS

The 1973 Classification and Pay Act granted wide discretion to the Personnel Division in the area of classification. The Act also left wide discretion to the Board of Personnel Appeals to develop policies and procedures for hearing and resolving appeals. The discretion granted both agencies was necessary to permit the development of a system that addressed the needs of Montana employees and the executive agencies. Both the classification plan and the appeals process have generated problems during the past six years which have limited the effectiveness of the entire classification effort.

Some of the problems of the appeals process were addressed in 1981. In many cases, it is too early to predict the full impact of recent changes in the law, the administrative rules and the policies and procedures of the Board. Recent changes and their expected consequences are:

(1) Grade Appeals Eliminated

The 1981 Legislature passed an amendment to the Classification and Pay Act that eliminates appeals of the grade assigned to a class. An employee who is dissatisfied with a classification must now argue that another existing class better describes his position than his present classification.

This change in the law should strengthen the integrity of internal comparability within the classification system by prohibiting case by case Board decisions that in the view of the Personnel Division result in misalignment of classes. By requiring appeals only to another existing class, the amendment should also greatly reduce the number of group appeals; since few, if any, large classes would all-inclusively fit the specifications for another existing class. As group appeals constituted the most costly and time-consuming category of appeals in the first six years of the process, this change should have a beneficial fiscal consequence. Reduction of the number of group appeals should also prevent the development of the caseload backlog that has plagued the process from the beginning.

(2) New Rule - Adopted to Specify Appealable Issues

In June of 1981, the Board of Personnel Appeals implemented a new administrative rule establishing specific issues that will be considered in the appeals process. The new rule limits the appealable issues to a list of 13 classification grievances. Appellants are required to identify the issues at step one of an appeal and they may not add issues at any later stage of the process without returning to step one.

Before this new rule, grievances were filed on no grounds other than a vague dissatisfaction with the current classification of the position. The new rule is expected to speed the appeal hearing process by permitting a focused argument by all parties. The rule also promises to make the hearing process and the findings of the Board more rational in terms of addressing the specific issue of an appeal. This increased rationality should make the process and the decisions of the Board more understandable to all parties.

(3) Program Instituted to Eliminate Backlog

From its inception, the BPA has fallen behind in the processing of classification appeals. There are several possible explanations for the backlog of cases facing the Board in 1981. There are probably two reasons that best explain the delay. First, the Board is also charged with labor relations work and in the past this work was given top priority by the Personnel Appeals Division. Classification appeals were processed only when time away from labor relations was available.

Second, Montana's law prior to the 1981 amendment mentioned above was among the most liberal in the nation in terms of providing access by employees to the appeals process. This accessibility led to a relatively large volume of appeals as the figures below demonstrate:

Number of Requested Classification Appeal Hearings
Before the BPA:

<u>1975-81</u>						
<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
221	145	95	82	72	58	20

The volume of appeal hearings and the Board's low priority on classification issues created a backlog of 150 appeals by 1981. A rough survey taken in 1981 indicated that appellants waited an average of 33 months to have a hearing on an appeal together with an additional fourmonth delay before receiving the Board's final decision.

The Board is currently engaged in a concerted effort to remove the large backlog of classssification appeals. The Board staff is working in conjunction with the Personnel Division, the Montana Public Employees' Association and the various appellants to hear cases at a rate of about two per week. It is expected that the backlog can be cleared by June of 1982. Also, the Board has assigned classification appeal cases to a time schedule and increased the emphasis on the appeal work of the Board. This internal policy is expected to prevent another case backlog.

(4) Full Board Limited Its Role

The role of the full Board in hearing exceptions to the findings of examiners has also been significantly streamlined. As a policy, the full Board now limits the scope of its review to an examination of the procedure used by the original hearing examiner. The Board thus acts much like an appellate court looking for evidence of arbitrary or capricious decisions or findings, abuse of discretion or clearly erroneous findings by the hearing examiner.

Eliminating a full re-hearing of appeals by the Board promises to speed the appeal process. More importantly, the change should lend greater consistency to the Board's findings since the full Board will no longer provide an alternate decision to that of the hearing examiner.

Also, as a matter of policy, the BPA staff has begun the use of bench memos to summarize a case set to go before the full Board. These memos will also include staff recommendations. This policy should also encourage consistency between examiners and the full Board, while strengthening the competence of lay members of the Board in the area of classification.

(5) Pre-hearing Preparation Increased

The consistency of Board decisions is expected to increase with the initiation of two procedures at the Personnel Appeals Division. First, the Board now

encourages parties to an appeal to submit pre-deliberation briefs in which precedents set by past appeals are cited. It is anticipated that these briefs will eliminate much of the oral argument and facilitate a focused review and decision by the examiner.

Second, to reduce the ambiguity of Board decisions, the examiners are now expected to provide more explanation of decisions. This should allow the parties to understand the decision, to set precedents for future appeal cases and to assure parties that their case was considered.

(6) Increased Training

The Personnel Appeals Division has taken steps to improve the expertise of the Board staff in hearing appeals. The Division intends to conduct more training for staff in the conduct of hearings and decision writing. The Board has also decided not to use student interns as hearings examiners in future appeals cases.

V. THE UNCORRECTED PROBLEM - INCONSISTENCIES CREATED BY DUAL DECISION MAKING

All of the reforms described above will undoubtedly streamline the grievance process and reduce ambiguity and inconsistency in Board decisions. They are not expected to correct the fundamental problem of inconsistency between Personnel Division and Board of Personnel Appeals decisions that introduce incongruity to the system.

Whether by accident or design, the state has, in effect, acquired two agencies with independent classification authority. As a result, the appeals process introduces a degree of inconsistency into the classification system while proving to be inefficient in addressing the grievances of employees. Before examining the issues of the proper role of the appeals process, a brief discussion of the nature of classification is necessary.

VI. THE NATURE OF CLASSIFICATION

Classification is the process of grouping positions that have similar duties and responsibilities into classes and then ranking those classes into a hierarchy based on some criteria. The major objective of a classification system is to provide a basis of order for the equitable and efficient handling of personnel matters. Most classification systems are designed to ensure uniformity in pay and to facilitate other processes such as recruitment,

selection, human resource planning and budget planning and control.

Most classification systems are based on principles and methods established by the federal government and big business early in this century. Although techniques may vary from one system to another, all systems include at least three steps in their process: fact-finding about jobs, evaluating and measuring the facts by some rating method, and determining a value for each job.

The equitable and consistent evaluation of jobs is not a simple process. There are well documented misconceptions and problems that are inherent in any classification system. These include such things as: misunderstanding of the philosophy and purpose of the system; pressure from managers to use the classification system as a panacea for personnel problems such as inadequate pay, lack of incentives and reward systems, labor shortages, employee morale, etc. and confusion between the qualifications of the incumbent and the duties of the position. At any step in the classification process, beginning with the purpose of the system through the actual determination of the worth of a job, any one of a number of these problems could support or invalidate the results of the evaluation of a position. Thus, as one writer has stated (Lawton), "position classifiers must be trained to walk safely through this minefield..."

These problems can be overcome by the proper design and operation of the classification system. There are many ways to design a system depending on the purpose and the resources that an organization wishes to expend. Although practitioners strive to build a system that is scientific and objective, the practice of classification is based on experienced and systematic judgment. The key to success in operating a classification system and maintaining its integrity, regardless of the complexity of its design, is consistency in decision making.

In Montana, however, an additional problem exists. There is inconsistency in decision making because there are two separate agencies that make classification decisions: the Personnel Division and the Board of Personnel Appeals. The role that the Board plays in the classification decision making process has the effect of introducing a duplicate classification process. The results of this duplicate process is the introduction of positions into the system that are not classified by the same criteria as other positions. Thus, the position classified through the appeal process may have a "ripple effect" through an agency or agencies as other positions are compared to it. More

importantly, the credibility of the classification plan is damaged as a systematic methodology is lost.

Two factors contribute to this situation: (1) the broad scope of review that has been adopted by the Board of Personnel Appeals, its staff and the courts in hearing appeals; (2) the inability of the Board and its staff to conduct an informed review. This is due in part to the Personnel Divisions failure to provide adequate written explanation and documentation of classification methods and results and the complexity of the classification process itself. These two factors are discussed in Sections VII and VIII.

VII. CONTRIBUTING FACTOR I - THE BOARD'S SCOPE OF REVIEW

Any quasi-judicial body, operating as the BPA has, without clear statutory limits on the scope of review allowed in hearings, may establish its own standard for review. There are two general forms of review recognized in administrative law:

- (1) A quasi-judicial board may elect to exercise only narrow, procedural review of an agency action. This narrow review implicitly assumes that the agency making a decision has the expertise and competence to carry out its mandated mission. Generally, a board exercising narrow review, limits the review of the decision to matters of due process, violation of legal mandate, an arbitrary or capricious abuse of discretion or a violation of established classification procedure.

The result of this narrow review typically involves returning a case to the agency to repeat all or a designated part of the decision-making process. The quasi-judicial body exercising narrow review would not substitute its judgment for that of the normal decision-making entity. In the classification process, adherence to narrow, procedural review by the BPA, requires the hearings examiner and the Board to refrain from making classification decisions. Instead, the Board would find whether the classification decision made by the Personnel Division was arbitrary or capricious, in violation of law or due process, or contrary to established classification policy and procedure.

- (2) A quasi-judicial board may also exercise broad, substantive review of a case when the law does not prohibit such a review. In exercising substantive review, the board chooses to substitute its judgment for that of the agency. Typically, to allow such a

broad review, the board must re-construct an entire case and in effect, fully duplicate the work of the agency. In conducting a substantive review of classification appeals, the BPA effectively asserts its interpretation of classification methodology over that of the Personnel Division.

In practice, the BPA has exercised both narrow, procedural review in classification appeals cases and broad, substantive review. In the absence of a policy for scope of review, the kind of review exercised by the BPA has been left to the discretion of the individual hearing examiner. Several cases from the appeal hearings conducted to date, illustrate the various and often conflicting roles adopted by the Board and its examiners:

1. In an appeal by a group of Eligibility Technicians (Appeal C-13) in 1978, the scope of the BPA's authority was challenged by both the Personnel Division and MPEA. The Eligibility Technicians (ET's) had appealed their grade 8 classification and requested an upgrade to grade 10. The Board's examiner found the employees aggrieved and substituted her judgment for that of the Personnel Division by ordering an upgrade to grade 9. When this decision was upheld by the full Board, both the MPEA and the Personnel Division appealed the ruling to state district court.

The Personnel Division argued that the Board's authority was limited to finding employees aggrieved and then remanding the case to the Personnel Division for remedy. The MPEA sought to persuade the court that, while the Board could substitute its judgment on classification matters, the only proper remedy to be offered by the Board was that requested by the appellants - in this case, a grade 10.

The district judge upheld the Board's authority to make a secondary classification decision on the grounds that the Legislature had authorized the board not to address grievances but to "insure proper classification of state employees." The court further extended the authority of the Board by rejecting MPEA's argument on the grounds that the Board can "determine the action that will resolve the grievance" based on its own findings.

Before and after this case, the Board has, on occasion, fully substituted its judgment and

effectively created a secondary classification process. In some cases, this secondary classification has at least attempted to protect the integrity of the state's mandated classification plan by following established methodology. In other cases, examiners have clearly crafted their own method.

2. In case G-43, an examiner found in favor of a group of Review Appraisers and ordered an upgrade for the entire class from grade 14 to grade 15. The significant aspect of this case was not merely the substitution of judgment by the examiner, but the method used to determine the proper grade. In the case, the examiner developed a factor-weighting method based on an 18 point scale. While the result of the method is not without logic, it quite completely ignores the established methodology of the State's Classification Plan.

3. The Board's disregard for the established classification methodology was made more apparent in a 1980 case, G-46. In this case, the MPEA went to district court to challenge the Board's right to overturn a hearing examiner's findings and orders.

The examiner had ordered an upgrade from grade 9 to grade 11 because an increase in duties had "substantially increased the complexity" of the work. The full Board, in reviewing the decision, found that the new duties had only made the position "somewhat more complex." Thus, the Board concluded without explanation or comparison to other positions that the upgrade should be to grade 10. While this kind of compromise may have seemed to be a more reasonable solution, it constituted a secondary classification decision based on an unknown methodology.

Even while some examiners have exercised the kind of broad review permitted them by the courts, other have exercised only narrow, procedural review.

4. In case 887, a Library Clerk's classification appeal was dismissed by the hearing examiner and then reversed by the full Board. In the examiner's opinion, he wrote: "We who sit as hearings examiners for the Board of Personnel Appeals should not pose as classification specialists. We should not overturn a classification decision made by Respondent where there was a thorough evaluation and analysis made by an experienced job analyst in

accordance with accepted methodology and practice. Unless a Petitioner can show that an error or mistake was made; that there was an improper application of methodology; that the job analyst did not consider all significant duties and responsibilities during his evaluation; or that, simply, the conclusion reached was illogical; we will defer to Respondent's analyst's judgment."

In reversing the examiner's recommended order, the Board ignored the examiner's description of the proper scope of review and fully substituted its judgment. The Board ignored the well-established principle that class specifications do not include all-inclusive descriptions of job duties. An upgrade was then ordered based on the assertion that since the incumbent's main duty was not mentioned in the specification for her present position but was mentioned in the specification for the next higher class.

5. The assertion that the Board's proper role is to provide procedural review of the Personnel Division, rather than to offer a secondary classification process, was also made by a hearing examiner in an appeal by an Employment Interviewer III in 1981. After soliciting briefs from both parties to the appeal on the proper scope of review of the Board, the examiner explicitly stated his view on the limits to the Board's review.

The examiner wrote that in an appeal "the appellant must demonstrate by the preponderance of the evidence that he/she has been aggrieved by the operation of the Classification and Pay Act." The examiner then argued that the burden of proof is upon the appellant to show that the action of the Personnel Division in classification has caused a grievance. To be aggrieved, the examiner argued, the appellant must show that the Personnel Division has acted in an unjust and oppressive manner by failing to meet the classification standards provided in the Classification and Pay Act.

Thus, according to the examiner, it is not the methodology, but the application of classification methodology by the Personnel Division that should properly be reviewed by the Board. The examiner wrote that in exercising such review, the Board should limit itself to a consideration of the following questions: (the terms used by the examiner vary from those used by the Personnel

Division but the principle of restrained review is outlined well by these comments)

1. "Are all other employees of the same occupational group classified by the same methodology? If not, who is not? Why?
2. Each methodology generally has major topics such as duties, responsibilities and qualifications. Do each of the major topics of the methodology receive the same relative weight for all employees of the same occupational group? If not, why?
3. Each major topic generally has factors such as the major topics of responsibilities has the factors of supervision received, supervision exercised, personal contacts and, scope and effect of actions and decisions. Do each of the factors of the major topic receive the same relative weight for all employees of the same occupational group? If not, why?
4. The factors generally have factor elements such as the factor of supervision received has factor elements of immediate supervision, close supervision, general supervision, general guidance and direction and, broad policy guideline and direction. Do each of the factor elements receive the same relative weight for all employees of the same occupational group? If not, why?
5. At times a job may be defined by a degree definition such as apprentice, entry or journeyman. Have the same degree definitions been used for all employees of the same occupational group? If not, why?
6. Have the degree definitions, factor elements, factors, major topics and methodology been fairly and equally applied to all employees including the Appellant of occupational group?"

The examiner concludes this analysis with the assertion that:

"A Hearings Examiner should only substitute his/her decision for that of the Personnel Division when such application and judgment is clearly erroneous or arbitrary by the preponderance of the evidence. By not letting the Hearings Examiner substitute his/her decision for that of the Personnel Division's decision at will; we are bowing to the expertise in the field of the full-time job analyst."

Curiously, while upholding the examiner's eventual dismissal of this case, the full Board refused to adopt this guideline for review. The Board rules that these guidelines created a "potential for confusion." No detailed discussion of the merits of the guidelines was offered.

VII. CONTRIBUTING FACTOR 2 - INABILITY OF THE BOARD TO CONDUCT AN INFORMED REVIEW.

An essential ingredient in any classification system is the job evaluation process. Job evaluation is a rational method using objectively established facts to determine the values and interrelationships of jobs within an organization. The primary job evaluation method used in the Montana classification plan is called the Factor-Comparison method. This method contains five factors that serve as a basis for comparing jobs to each other so positions can be grouped together into classes and classes can be ranked against each other in a hierarchy. The factors are: nature of work, supervision exercised, supervision received, public contact and scope and effect of actions and decisions.

The factors are used by comparing the duties and responsibilities of positions or classes to each other and making a series of qualitative judgments as to the relative strengths and weaknesses of a position or class in each of the five factors. The cumulative judgments result in the allocation of a position to a class and the assignment of a grade to the class. The grade level is then the basis for the pay that is received by an employee.

Another essential element in the classification process is job analysis. Job analysis is a fact finding process that entails the systematic collection and documentation of information about positions. This information includes

duties, responsibilities and requirements, the functions of the organization where the position is located and how the position fits into the organization. Job analysis is accomplished by collecting position descriptions prepared by employees and/or supervisors and on-site interviews with employees, supervisors and others who are knowledgeable about the work performed and the organization. It is necessary to have a thorough understanding about each position being classified in order to make the judgment required in the job evaluation process.

When positions are grouped together and a class is formed, a class specification is prepared. The class specification is a general description that defines the class in terms of kind and level or work, how the class differs from other classes, how the job evaluation factors are used and the minimum requirements necessary to perform the work of the class. The specification is an essential document that explains the result of the classification process and is necessary in maintaining the system.

The three ingredients of the classification process are explained above: job analysis, job evaluation and class specifications comprise the basic "methodology" of the Montana classification system.

A recurring problem for the Board and its staff has stemmed from a lack of understanding of the classification methodology and a lack of opportunity to apply it appropriately. The problem with understanding the methodology, besides the lack of training and low priority on classification appeals described earlier, is the lack of thorough documentation and explanation of the job evaluation process by the Personnel Division. This was compounded by the fact that the Personnel Division changed its job evaluation method.

Classification had been implemented with the Benchmark Weighting method. The Personnel Division found that this system proved to be poorly designed, inadequately documented, not clearly understood and difficult to explain or defend.

In 1977, the Personnel Division adopted the current Factor Comparison method with the hope that this job evaluation method would be more accountable to the kind of appeal reviews that were being conducted. This method replaces the quantitative judgments of the Benchmark system with more complex qualitative judgments. Because of this added complexity, however, an even greater burden was placed on the Board to improve its understanding of the system.

Another documentation problem has been inadequate class specifications. During the development phase of the system in 1974 not enough time was allocated to writing specifications. As a result many specifications do not provide clear and understandable information. Additionally, the Personnel Division has been unable to devote the necessary manpower to revise and update existing specifications and write new specifications as the need arises. Although two or three staff are always working on specifications, the Personnel Division has never been able to fully recover from the mistakes and lack of time that plagued the development of the system. The result of the problem with specifications is that in some hearings, the hearings examiner must make a decision that is based on confusing or unclear information.

The final problem with methodology in the appeals process is with job analysis. If the hearings examiner wishes to perform a substantive review of an appeal it would stand to reason that he/she must conduct a job analysis since this is an essential step in classifying positions. In a hearing, the job analysis is in the form of testimony from the employee, supervisors and the classification specialist. However, a hearing does not accommodate itself to systematic fact-finding about a job. The hearings examiner is unable to get a clear understanding about a job because of the emotional aspect of the hearing, the adversarial relationships that develop among the appellant, the supervisor and the Personnel Division, and because of the pressure to limit testimony and make the hearing as simple as possible. Without the benefit of a complete understanding of the position the hearings examiner cannot be expected to accurately evaluate the position and make an informed decision.

The inability of the Board to conduct an informed review is based in part on a lack of understanding of the classification methodology and inaccessibility to all of its parts. The net affect is that the Board can do neither an adequate procedural review nor an adequate substantive review. It is imperative that the Personnel Division finish its work in documenting the system, but it is just as imperative for the Board and its staff to understand classification methods and practices and that its role in the appeals process be clarified.

Some other states that have established a classification appeals process have encountered the same problem of trying to maintain a classification system, while trusting appeals to persons not expert in the methodology of that system. The head of Pennsylvania's personnel function has written that "we have determined that it could be extremely

hazardous to fix responsibility (classification) with someone who has no knowledge of position classification." Similarly, the head of personnel in Indiana has commented:

"It has been very frustrating for us to attempt to be consistent in our classification decisions and then have a non-technical appeals commission make the final decisions on classification."

IX. STATE AGENCIES AND THE CLASSIFICATION PROCESS

Up to this point we have only referred briefly to the role of the operating agencies in the classification process. In order to make recommendations that will serve the entire classification system it is necessary to discuss the role and needs of the agencies and some of the problems they face in dealing with the system.

The Personnel Division is responsible not only for developing and maintaining a classification system and investigating appeals that arise from its operation, but we also exercise authority over agencies in classifying positions on a daily basis. A staff of classification specialists works with agencies to review and approve requests to classify new positions and reclassify existing positions. Many of the actions that come from agencies are of a routine nature that result from changes to positions due to reorganizations, new programs, deletion of programs, etc. An agency may not hire persons for new positions without prior approval on the classification of the position.

The role of agencies in the classification process is to provide information about jobs. They are also relied upon to make recommendations on how positions should be classified. This recommendation is important because agency personnel are in the best position to know how a job fits into the organization and to know the duties and responsibilities assigned to the position. In most cases agency recommendations are approved. Thus, to work with the classification system agencies are expected to have some expertise in position classification, although this will vary depending on the resources the agency is able to expend.

Working with the classification system can be frustrating for agencies. It takes time to comply with the requirements to provide position descriptions and other information necessary to make classification decisions. It takes time for a classification action to work through the system of review and approval by the Personnel Division. Additionally, there is sometimes disagreement and conflict

over the classification decisions of the Personnel Division. Agencies feel this disagreement stems from the fact that their opinion is ignored or they feel they have no say at all in the outcome of the process or that the classification analyst does not understand the position and thus cannot make an informed decision. Just as often, however, the Personnel Division has found that some agencies do not understand the purpose or requirements of the classification system.

To get around the barrier of the Personnel Division in deciding the classification of positions agencies have been known to use the appeals process. A manager unable to make a case for reclassification will encourage employees to appeal because they know they can restate their request to an independent agency. This is evidenced by the fact that management representatives frequently are found testifying in favor of employees and against the Personnel Division at appeal hearings. If the upgrade is granted through appeal, the agency has effectively performed an "end run" around the Personnel Division's classification authority. If the upgrade requires an increased appropriation at a later date, the Personnel Division or the BPA can be blamed by the agency management.

X. IMPACT OF THE APPEALS PROCESS

The decisions of the BPA in classification appeals have had important financial impacts for the state. It is estimated that total appeals decisions have cost more than \$5 million. The costs of meeting upgrades from appeals are unanticipated and as such, they have added demands to annual agency budgets. A study of appeals from 1975 to 1979 by the Classification Bureau staff indicated that the BPA authorized \$2.6 million in upgrades at step four while the Personnel Division authorized \$2.4 million in upgrades at step three.

It is impossible to estimate in detail the complete, indirect costs of decisions made through the appeals process. The most consequential indirect cost undoubtedly stems from the "ripple effect" discussed previously. The Factor Comparison method used by the Personnel Division relies on the qualitative values established for each factor along with internal comparability among positions.

When a position is upgraded in violation of the accepted method, there is an effect on many other positions related to it. For example, if a clerk supervisor is upgraded, it is logical within the terms of the methodology that positions below and above that position will gain importance through contacts with the upgraded position.

This ripple effect can and does spread across agencies as positions in one agency with comparable duties and/or titles request a promotion based on comparison to the position upgraded through an appeal in another agency.

When the Board exercises broad review and substitutes its judgment for that of the Personnel Division, the appeals process creates indirect cost by duplicating the classification process. In effect, when duplicating a classification decision process, the Board wastes the expertise and effort that the staff of the Personnel Division is paid to provide.

XI. CONCLUSION

Problems with the appeals process have eroded the integrity of the classification plan and have been disruptive to the overall personnel management effort of State government. Because the Board substitutes its judgment for that of the Personnel Division on substantive classification decisions without the benefit of the information necessary to make good decisions the classification system suffers from inconsistency and lack of integrity.

It is not contended by the Classification Bureau that employees should be denied the right to appeal classification decisions. Indeed, the Legislature clearly provides for that right in the Classification and Pay Act. Also, the majority of states do provide some avenue for appeals. The view presented here is that, as it has evolved, the Board of Personnel Appeals in its effort to fairly hear classification grievances has created a duplicate classification process that seriously undermines the mandated authority of the Personnel Division and contributes inefficiency and inconsistency to the classification process.

Although, there will always be disagreement over how a position should be classified, regardless of who makes the decision, it was never intended that the classification system and the attendant appeals process be a hindrance to efficient and effective personnel management. However, as this paper has pointed out there are some problems that must be overcome. The following is a discussion of options to solve these problems.

XII. OPTIONS

The basic problem of incongruity introduced by two separate decision makers can obviously be solved by eliminating the decision making authority of one of the two parties, but in this case such a solution would be impractical. Authority

for classification appeal decisions without classifications would be nonsensical and authority for classification decisions without review would leave room for abuse. Following are two workable options:

OPTION 1: Clarify and/or objectify the classification methodology so that the BPA can make classification decisions that are consistent with the methodology.

Aside from the solvable problem of inadequate resources, the Classification Bureau feels that this may be an impossible option for two reasons: (1) irrespective of the methodology used, classification is essentially experienced and systematic judgment and consequently, consistency can only be achieved by individuals who have had an opportunity to experience the numerous judgments and their relationships that collectively comprise the classification system; (2) adequate information about the job in question is critical to an informed decision but cannot be acquired in the context of a hearing because of: (a) the emotional involvement and adversarial relationships that develop, and (b) the time pressure.

At the March meeting the Commission will have greater opportunity to examine the State's classification methodology as well as other common methodologies, some of which are more quantitative. This information should place the Commission in a better position to assess this option.

In the view of the Classification Bureau, this option would require increased development resources. These would preferably consist of current experienced staff freed from current responsibilities. One of the options currently being examined by the Personnel Division (delegation of classification responsibility to the agencies) would free some existing staff. The delegation issue will be presented in staff papers for the March meeting.

OPTION 2: Limit the scope of review of the Board of Personnel Appeals to specifically defined procedural issue such as arbitrary or capricious action, abuse of discretion, or clearly erroneous findings.

This option would solve the problem of dual decision making but would effectively eliminate substantive review which a number of interested parties would find unacceptable.

If the option of delegating classification authority to the agencies is adopted, the Personnel Division could conduct substantive reviews of agency decisions and the BPA could hear appeals on procedural issues.

This division of authority would parallel that found in most accounting systems. The central agency (the Personnel Division) would establish methods, procedures and rules and conduct reviews. The operating agencies would make daily decisions to meet their needs.

As indicated above, the delegated option will be considered at the March meeting.

APPENDIX A

STATUTE ESTABLISHING PROCEDURES FOR CLASSIFICATION APPEALS TO THE BPA

2-18-1011. Classification or compensation grievance — retaliation — hearing on complaint. (1) An employee or his representative affected by the operation of parts 1 through 3 of this chapter is entitled to file a complaint with the board of personnel appeals provided for in 2-15-1705 and to be heard under the provisions of a grievance procedure to be prescribed by the board.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the agency for which the employee works or by any other agency of state government against an employee because the employee has filed or attempted to file a complaint with the board shall also be basis for a complaint and shall entitle the employee to file a complaint with the board and to be heard under the provisions of the grievance procedure prescribed by the board.

(3) An action attempting to revise the class specifications of or series of class specifications involving an employee exercising a right conferred by 2-18-1011 through 2-18-1013 in a way which would adversely affect the employee prior to final resolution or entry of a final order with respect thereto is presumed to be an interference, restraint, coercion, or retaliation prohibited by subsection (2) of this section unless such review was commenced or scheduled prior to filing of the appeal and was not prompted by the grievance appealed from. The presumption is rebuttable.

History: En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977; R.C.M. 1947, 82A-1014(part); amd. Sec. 14, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "personnel" for "personal" in (1).

2-18-1012. Grievance procedure. If upon the preponderance of the evidence taken at the hearing the board is of the opinion that the employee is aggrieved, it may issue an order to the appropriate agency or agencies of state government requiring such action as will resolve the employee's grievance. In any hearing the board is not bound by statutory or common-law rules of evidence.

History: En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977; R.C.M. 1947, 82A-1014(part).

2-18-1013. Enforcement of board order — petition to district court. The board or the employee may petition for the enforcement of the

board's order and for appropriate temporary relief and shall file in the district court the record of the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing. After the hearing, the district court shall issue its order granting such temporary or permanent relief as it considers just and proper. No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

History: En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977; R.C.M. 1947, 82A-1014(4)(d).

APPENDIX B

ADMINISTRATIVE RULES OF THE BPA GOVERNING CLASSIFICATION APPEALS

BOARD OF PERSONNEL APPEALS

24.26.502

Sub-Chapter 5

Wage and Classification Appeals

24.26.501 PURPOSE (1) The purpose of these regulations is to provide all classified employees of the State of Montana an orderly and uniform method to file and process appeals arising from the operation of the state employees' classification and pay plan title 2, chapter 18, MCA. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75.)

24.26.502 DEFINITIONS (1) "Employee" means any person employed by the state of Montana, except: elected officials and their chief deputy and executive secretary; officers and employees of the legislative branch; judges and employees of the judicial branch; members of boards and commissions appointed by the governor, appointed by the legislature or appointed by other elected state officials, officers or members of the militia; agency heads appointed by the governor; academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education; personal staff of the executive officials enumerated in article VI, section one of the constitution of Montana.

(2) "Agency" means any department, board, commission, office, bureau, institution or unit of state government recognized in the state budget.

(3) "Department" means one of the 20 principal departments within the executive branch, as provided by the constitution.

(4) "Department head" means a director, commission, board, commissioner, or constitutional officer in charge of a department.

(5) "Board" means the board of personnel appeals or its designated agent.

(6) "Personnel division" means the personnel division of the department of administration.

(7) "Inquiry" means the process of gathering and weighing evidence bearing on appeals. This process may include securing documents, holding individual interviews or group meetings, conducting a hearing, or any combination of the above.

(8) "Appeal" means any complaint filed with the board of personnel appeals relating to the operation of the state employees' classification and pay plan, title 2, chapter 18, MCA.

(9) "Working days" means all calendar days except Saturdays, Sundays, or legal holidays.

(10) "Form" means the state employees classification and wage appeal form BPA-C(1).

(11) "Formal appeals procedure" means the appeals procedure provided for state employees in 24.26.508. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75.)

24.26.503 INFORMAL RESOLUTION OF APPEALS (1) The board encourages the personnel division and state employees to attempt to resolve appeals through an informal procedure as prescribed by the personnel division before initiating the formal appeals procedure. Every attempt should be made to resolve an appeal at the earliest possible stage of the appeals process, preferably between the employee and their immediate supervisor. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75; AMD, 1981 MAR p.624, Eff. 6/26/81.)

Rules 24.26.504 through 24.26.507 Reserved

24.26.508 GRIEVANCE PROCEDURE (1) Step One. Any employee, group of employees, or appropriately designated representatives, may utilize the formal appeals procedure. The individual employee must obtain a state employee classification and wage appeal form BPA-C(1) and follow the accompanying instructions. In the case of a group appeal, a group of employees must comply with the rules governing group appeals (24.26.404). Forms may be obtained from the board of personnel appeals, capitol station, Helena, Montana, or from the personnel offices of all departments within the executive branch.

(a) The appropriate form when completed shall be submitted to the immediate supervisor.

(b) To complete the form, the employee must clearly identify the issue or issues motivating the appeal. A list of appealable issues will be provided with the appeal form. The employee must explain in detail the issue and their reasons for appealing. If an issue or reason for the appeal is not adequately identified, the appeal may be returned to the employee at any step in the appeal procedure.

(c) Appealable issues are the following:

(i) The class specification doesn't adequately describe my position duties.

(ii) A different class specification is a better description of my position duties.

(iii) The class title is inappropriate for my position.

(iv) The minimum qualifications are not equivalent to those required to do my job.

(v) Other positions assigned to the same class have less difficult work than my position.

BOARD OF PERSONNEL APPEALS

24-26.508

- (vi) My position duties are more similar to positions assigned to a different class.
 - (vii) Other positions assigned to the same class perform duties significantly different than my position duties.
 - (viii) The position description for my position class does not adequately describe the duties and responsibilities assigned.
 - (ix) There are significant responsibilities assigned to my position which are not included in the position description.
 - (x) There are significant duties described in the position description which are not performed by this position.
 - (xi) There is not a current position description available for my position.
 - (xii) The pay plan rules have been incorrectly applied to my position (specific rules(s) should be cited).
 - (xiii) (other) must specifically relate to position classification.
- (d) The immediate supervisor shall have ten working days to examine the appeal, attempt to resolve the complaint, record his or her findings, record steps taken (if any) to resolve appeal, and return the form to the employee.
- (e) If the immediate supervisor feels the employee appeal has merit, the immediate supervisor may, initiate a request for reclassification through the agency personnel office; or request an administrative review of the classification of the employee's position, or redescribe the position duties to more adequately reflect actual work performed or initiate and complete other steps to address the identified issue. The employee should continue the appeal even if administrative action is underway.
- (f) If the employee does not accept the findings of the immediate supervisor, the employee shall have five working days to forward the evaluation and findings of the immediate supervisor to step two.
- (2) Step Two
- (a) If the employee chooses to continue the appeal, the employee shall submit the form with all appropriate sections completed to the department head for review.
- (b) The department head shall have five working days to review the appeal, record his or her findings, record steps taken to resolve the appeal, and return it to the employee.
- (c) If the employee does not accept the findings of the department head, the employee shall have five working days to forward the evaluation and findings of the department head to step three.
- (3) Step Three
- (a) If the employee chooses to continue the appeal, the employee shall submit the form, all appropriate sections completed, to the personnel division for review.

(b) The personnel division shall have 30 working days to review the matter, record its findings in the appropriate section of the form, and to issue its recommended adjustment and return it to the employee or the proper representative.

(c) The personnel division's review and findings shall be limited to the issue(s) identified in Step One of the appeal. Any additional issues identified at Step Three will be addressed through informal, administrative procedures as determined by the personnel division.

(d) The personnel division will prepare detailed written findings in response to the issue(s) identified at step one.

(e) If the employee accepts the personnel division's findings and recommendation, the formal appeals procedure is concluded upon the implementation of the personnel division's findings and recommendations.

(f) The employee shall have 10 working days to forward the appeal to the board for resolution.

(4) Step Four

(a) If the employee rejects the personnel division's findings and recommendation, the employee shall submit the form BPA-C(1), with all appropriate sections completed, to the board.

(b) The employee must identify and record where they feel the Personnel Division's findings are in error.

(c) The board shall have 10 working days to accept or reject the appeal for hearing at Step Four.

(i) The board shall examine the issue(s) and exceptions identified by the employee. If the issue(s) and exceptions are adequately described, the board will accept the appeal at Step Four.

(ii) If the board finds the issue identified at step one to be inadequately described, the board shall return the appeal to the employee. In such case, the employee may redescribe the issue and refile the appeal at step one within 10 working days.

(iii) If the Board feels that the personnel division's written findings or the employee's exceptions to the written findings are not adequately described, the board shall return the appeal to the appropriate party. In such case, the party will expand its findings or exceptions and refile them with the Board within 10 working days.

(d) If in the board's discretion it decides to conduct a preliminary investigation in the appeal, it shall have 20 days to do so. The board may carry out any investigations deemed necessary for resolution of the appeal or complaint. The employee or group of employees and personnel division shall have ten days to accept or reject the preliminary decision. If the employee or group of employees and the personnel division accept the preliminary decision, it shall be final and binding. The board shall then implement

the preliminary decision by instructing the personnel division to remedy the situation.

(e) If the employee, group of employees, or the Personnel Division reject the preliminary decision or the board in its discretion decides not to conduct a preliminary investigation, the board or an agent appointed by the board shall conduct a hearing in accordance with title 2, chapter 4, MCA.

(f) Any investigation and/or hearing conducted by the board shall be restricted to the issue identified at Step One.

(g) If the preponderance of evidence taken at the hearing shows the employee is aggrieved, the board shall issue an order requiring action to resolve the employee's grievance.

(h) Upon the conclusion of the hearings process, the Board shall issue its proposed findings of fact, conclusions of law, and recommended order within 90 working days.

(i) The prescribed time limits at any step of the appeals process may be modified or waived upon mutual agreement of all parties. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75; AMD, Eff. 12/4/76; AMD 1978 MAR p. 74, Eff. 1/25/78; AMD, 1981 MAR p. 624, Eff. 6/26/81.)

Rules 24.26.509 through 24.26.512 Reserved

24.26.513 GROUP APPEALS (1) If the facts of a given appeal affect a large number of employees in the same manner as the appealing employee and the conditions of rule 23 of the Montana Rules of Civil Procedure are met, the board may designate the appeal a group appeal.

(2) Notice of intent to maintain a group appeal shall immediately be sent to the board. As soon as practicable

after notice is sent, the board shall approve or disapprove the group appeal. Such decision may be conditional, and may be altered or amended at any time before final determination by the board after a hearing.

(3) Rule 23 shall also govern notice to members of the group, withdrawal of a member from a group, use of his own counsel by a group member, the effect of board findings on a group, maintenance of a group action in regard to particular issues or subclasses, supplementary orders controlling conduct of the action, and dismissal or compromise of the appeal.

(4) In a case designated as a group appeal by the board, the appeal shall begin at step three of the formal appeals procedure provided in 24.26.403. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75)

Rules 24.26.514 through 24.26.517 Reserved

24.26.518 FAILURE OF SUPERVISOR, DEPARTMENT HEAD, OR PERSONNEL DIVISION TO ACT WITHIN PRESCRIBED TIME LIMIT (1) If the immediate supervisor, department head, or the personnel division does not respond to an employee's appeal within the prescribed time limits in the appeals procedure, the employee may forward his appeal to the next step in the appeals procedure by forwarding his original copy of form BPA-C(1) and a new copy of form BPA-C(1) to the next step within five days of the expiration of the time limit. (History: Sec 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75.)

Rules 24.26.517 through 24.26.522 Reserved

24.26.523 FILING OF A NEW PETITION FOR HEARING AFTER FINAL ORDER ISSUED (1) After a final order concerning a position has been issued by the board, a new hearing will be granted only upon a showing of some substantial change in that position which was not considered at the prior hearing and which would warrant a new hearing by the board.

(2) The employee shall include with his petition a signed affidavit stating the substantial change.

(3) The petition and the affidavit shall proceed through the appeals procedure as prescribed in ARM 24.26.508 up to step four b.

(4) The staff shall then conduct a preliminary investigation to determine if the alleged substantial change warrants a new hearing.

(a) If it is determined that the alleged substantial

change warrants a new hearing, the appeal procedure shall proceed as prescribed in ARM 24.26.508.

(b) If it is determined that the alleged substantial change does not warrant a new hearing, the petition shall be dismissed.

(5) The order to dismiss shall be an appealable order. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 12/4/76.)

Rules 24.26.524 through 24.26.529 Reserved

24.26.530 FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION (1) If an employee's supervisor, or the agency for which the employee works, directly or indirectly interferes, restrains, coerces or retaliates against an employee because the employee has filed or attempted to file a grievance with the board, the employee shall be entitled to file a complaint with the board.

(2) The complaint shall be in writing and shall contain a clear and concise statement of facts constituting the alleged interference, restraint, coercion or retaliation.

(3) The Board shall serve the complaint upon the employee's supervisor or the agency for which the employee works and the supervisor or agency shall have ten days from the date of service of the complaint upon them to respond to the complaint.

(4) After ten days have elapsed from the date of service of the complaint, the board shall commence with step four b of the formal appeals procedure. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75.)

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